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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,414	10/28/2003	John G. Robertson	RBI-022	7254
959	7590	12/19/2007	EXAMINER	
LAHIVE & COCKFIELD, LLP			SAMALA, JAGADISHWAR RAO	
ONE POST OFFICE SQUARE			ART UNIT	PAPER NUMBER
BOSTON, MA 02109-2127			1618	
			MAIL DATE	DELIVERY MODE
			12/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/696,414	ROBERTSON, JOHN G.
	Examiner	Art Unit
	Jagadishwar R. Samala	1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-7 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date ____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. ____.
- 5) Notice of Informal Patent Application
- 6) Other: ____.

DETAILED ACTION

Status of Application

1. Applicant's election without traverse of group I, claims 1-7 in the reply filed on 10/01/2007 is acknowledged. Claims 8-13 are cancelled. Claims 1-7 are pending and presented for examination.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1-3 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Marx, Ivan (EP 819 840 A3).

With respect to claim 1-3 and 5-7, Marx discloses a method of detecting halitosis in a person's breath. And the method comprising the steps of: bringing a person's breath into contact with a detection agent by having the person blow or breathe into a gas detector to form a detectable visible reaction product, e.g. by way of color change. And also in one embodiment, the gas detector may contain a detection solution, e.g. an aqueous solution, with the detection agent being the solute dissolved in the solvent of the solution. Normally more than one detection agent can be dissolved in the solvent. And specific compounds are volatile sulphur-containing compounds such as hydrogen sulphide, thiols or mercaptans. And further, the container may be of glass, transparent

plastics material or any other suitable transparent or translucent material. Giving the instant claim set the broadest reasonable interpretation, and during the process of breathe into the gas detector, a person can easily smell of said halitosis gaseous components contained in a reservoir and indicate the odor of halitosis associated compounds. Although a method for detecting halitosis in a subject to smell of halitosis associated compounds contained in the reservoir as required by instant claim as not been explicitly mentioned, because by bringing a person's breath into contact with a detection agent by having the person blow or breathe into a gas detector assist in the achievement of desired indicative of halitosis in said subject and the claim is met by the teaching of the cited reference.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marx, Ivan (EP 819 840 A3) in view of Sarit Goldberg et al. (In Bad Breath Research Perspectives, 71-85, 1997).

Marx Ivan meets the claim limitations as described above but fails to include indole or cadaversin in halitosis associated compounds for detecting halitosis in a subject.

However, Goldberg discloses that in study by Rosenberg and McCulloch, the potential contribution of nonsulfur components to the oral halitosis. When solutions of indole, skatole putreascine, cadaversine were allowed to dry on human skin, prolonged release of odor was observed.

It would have been obvious by one skilled in the art at the time the invention was made to modify the method of detecting halitosis as taught by Marx Ivan by incorporating indole or cadaversin as halitosis compounds in a reservoir for detecting halitosis in a subject as taught by Goldberg. The person of ordinary skill in the art would have motivated to make that modification because adding non-sulfur components for the detection and measurement of malodorants in human suffering from halitosis and also to provide a portable-type halitosis detector device capable of easily and conveniently detecting human halitosis. The person of ordinary skill in the art reasonably would have expected success because similar methods were already being performed at the time the invention was made. Therefore, the claimed invention as a whole was clearly *prima facie* obvious over the prior art.

Conclusion

1. No claims are allowed at this time.
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jagadishwar R. Samala whose telephone number is (571)272-9927. The examiner can normally be reached on 8.30 A.M to 5.00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571)272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jagadishwar R Samala
Examiner
Art Unit 1618

Zohreh Fay
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